IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8-8-2007

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR

W.P.No.8945 of 2001
W.P.M.P.No.16434 of 2006

1. G. Palani
2. Radha S. Kumar
3. K.B. Sivakumar
4. K.N. Rangasamy
5. V.V. Venkitaramani
6. S. Radhakrishnan
7. R. Ramachandran
8. G. Sivaramakrishnan
9. S. Krishnamoorthy
10. M.R. Visweswaran
11. V. Sundaresa Davey
12. T.S. Rangamani
13. N. Narayanaswamy
14. B.G. Krishnamurthy
15. T.V. Srinivasan
16. K. Santhalakshmi
17. R. Sampath ... Petitioners

Vs

1. Bank of Baroda,
rep.by the Chariman & Managing Director,
Central Office, PB 10046,
3, Walchand Hirachand Marg,
Ballard Pier, Mumbai - 400 038.

2. The Competent Authority for Pension Regulations,
(Assistant General Manager),
Bank Of Baroda, Suraj Plaza III,
Sayajigunj, Baroda - 390 005.

3. Union of India,
rep.by its Secretary to the Banking Division,
Ministry of Finance,
New Delhi - 110 001. ... Respondents

(R-3 impleaded as per order of the Court
dated 12.7.2006 in WPMP No.16426/2006)

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This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of declaration or any other appropriate writ, order or direction of like nature declaring that sub-clause (c) of Clause (s) of Regulation 2 of Bank of Baroda (Employees) Pension Regulation, 1995, is null and void and direct the second respondent to pay the difference in Basic Pension and Additional Pension and commutation of Pension with interest at a rate to be determined by this Court, in terms of the Bank of Baroda (Employees') Pension Regulations, 1995.

(Prayer amended as per the order of this Court dated 12.7.2006 in WPMP No.16433 of 2006)

For Petitioners : Mr.C.R.Chandrasekaran, for M/s.Aiyar & Dolia

For Respondents 1&2 : Mr.A.P.S.Kasthuri Rangan, for M/s.Sampathkumar Associates

For 3rd Respondent : Mr.S.M.Deena Dayalan, ACGSC

O R D E R

The amended prayer in this writ petition is to issue a writ of declaration or any other appropriate writ, order or direction of like nature declaring that sub-clause (c) of Clause (s) of Regulation 2 of Bank of Baroda (Employees) Pension Regulation, 1995, as amended in April, 2003, is null and void and direct the second respondent to pay the difference in Basic Pension and Additional Pension and commutation of Pension with interest at a rate to be determined by this Court, in terms of the Bank of Baroda (Employees') Pension Regulations, 1995.

2. The brief facts necessary for disposal of this writ petition are as follows:

(a) The petitioners herein are retired Bank Employees, retired on voluntary retirement or on superannuation, between 30.11.1998 and 31.8.2000. They were employees of the Bank of Baroda and their service conditions are governed under the Bank of Baroda (Officers) Service Regulations, 1979, Bank of Baroda (Officers) Conduct Regulations, 1976, Bank of Baroda (Officers) Discipline & Appeal Regulations, 1976, and Bank of Baroda (Employees) Pension Regulations, 1995.

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(b) On 29.10.1993, All India Bank Officers Confederation and other Unions and the Indian Banks' Association, in which the first respondent Bank is a member, adopted a pension regulation, which was circulated to all Nationalised Banks and the first respondent in turn, circulated the same to its employees on 4.5.1994. The said circular directed the employees to exercise an irrevocable option on or before 30.9.1994 for pension in the place of contributory provident fund. The petitioners have exercised the irrevocable option within the said date.

(c) The Bank of Baroda (Employees) Pension Regulations, 1995, was passed by the Board of Directors of the first respondent Bank in exercise of powers conferred under section 19(2)(f) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, after consultation with the Reserve Bank of India and with prior sanction of the Central Government and it came into effect from 29.9.1995. Regulation 3(9) of the Pension Regulations stated that the option exercised before the notified date i.e., on 29.9.1995 would suffice for getting pension. Regulation 35(2) stipulates that if an employee retires in accordance with the provisions of the service regulations or settlement after completing the qualified service of not less than 33 years, the amount of basic pension shall be calculated at 50% of the average emoluments. Regulation 2(d) states that average emoluments would mean average of pay drawn by the employee during the last 10 months of his service in the Bank.

(d) However, the first respondent Bank by referring to the Joint Note signed by the IBA with various Unions on 14.12.1999, advised each of the petitioners that pay for the purposes of pension, shall be the aggregate of pay as per the earlier Joint Note dated 23.6.1995 and dearness allowance thereon at 1616 points of All India Consumer Price Index for Industrial Workers with base 1960 = 100 CPI (for Short), the pay scales were also revised from 1.4.1998 by the first respondent Bank and all the petitioners were also paid arrears of pay due to the revision.

(e) It is further stated that the revised pay having been fixed with effect from 1.4.1998 in the above said manner, for the purpose of pension also, the same is bound to be taken as average emoluments of ten months. However, the respondent Bank is not taking the said pay for the purpose of sanction of pension to the persons retired after 1.4.1998 on the ground that dearness allowance was increased only for payment of salary from 1.4.1998 and not for calculation of pension and the association also agreed for the said course and ultimately a Joint Note was adopted by amending the Regulation in April, 2003.

(f) The said amendment is sought to be quashed in this writ petition by contending that ten months average pay being the amount to be calculated for pension, the respondents are not justified in adopting two different yardsticks for the purpose of pension and for payment of salary. It is also contended in the affidavit that there

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cannot be two classes of persons i.e., Bank Employees retired before 1.4.1998 and those retired/retiring on or after 1.4.1998.

3. The respondents have filed counter affidavit wherein it is stated that the revision of salary can give right to claim only for arrears of salary on the basis of enhancement and the first respondent has got every right and power to set Pension Rules as per the settlement, initially with Joint Note and subsequently by amendment. The date fixed as 1.4.1998 is also based on intelligible differentia as dearness allowance was increased with effect from 1.4.1998 and earlier the same was not the case. The said terms and conditions for enhancement of the dearness allowance was agreed to by the Unions and the petitioners have also availed the benefit arising out of the pay revision from 1.4.1998 and therefore the petitioners are not entitled to now contend that the amendment issued is not valid as they have impliedly accepted the terms by receiving the higher pay from 1.4.1998.

4. The learned counsel appearing for the petitioners submitted that even though the petitioners received arrears of salary due to pay revision, the same was effected due to higher rate of dearness allowance with pay. Since the Pension Regulations state that ten months average pay should be taken as the basis for fixing the pension, the respondents are not justified in accepting the pre-revised scale for the purpose of sanction of pension. The learned counsel also submitted that the action of the respondents in calculating pension in two different modes to the employees, who retired prior to 1.4.1998 and those who retired/retire on or after 1.4.1998 is discriminatory and therefore the impugned regulations should be set aside.

5. The learned counsel appearing for the respondents submitted that the Pension Regulations having been amended, the petitioners are bound by the same. There is no discrimination in adopting different calculations to the persons retired prior to 1.4.1998 and for persons retired/retiring on or after 1.4.1998, the reason being, from 1.4.1998 the dearness allowance is enhanced and higher pay was fixed. However, prior to 1.4.1998, the rate of dearness allowance was low and therefore ten months average of basic pay was adopted and there is no discrimination. The learned counsel also submitted that the Unions, after negotiations, taking note of the benefit in the pay revision, accepted the terms and conditions as per the Joint Note and agreed for fixation of pension without the increased rate of dearness allowance and the petitioners have also in terms of the said Joint Note, accepted the difference in pay from 1.4.1998 without any demur and the petitioners are estopped from challenging the amended regulation as it amount to approbate and reprobate. The learned counsel for the respondents also submitted that there is no discrimination of the persons, who retired/retire on or after

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1.4.1998 as all are paid pension and commutation based on the pre-revised pay scale.

6. The learned counsel appearing for the petitioners as well as respondents cited various decisions in support of their respective contentions.

7. I have considered the rival submissions made by the learned counsel appearing for the petitioners as well as respondents.

8. The point in issue is whether the respondents are justified in stating that pay for the purpose of pension shall be the aggregate of the pre-revised pay and dearness allowance thereon at PP-1616 points to those who retired/retiring on or after 1.4.1998 for the purpose of sanction of pension.

9. The amended Regulation 2(s)(c) of the Bank of Baroda (Employees) Pension Regulation, 2003, reads as follows:

> "2(s)(c). In relation to an employee who retired or died while in service on or after the 1st day of April, 1998.
>
> (i) The basic pay including stagnation increments, if any; and,
>
> (ii) all other components of pay counted for the purpose of making contributions to the Provident Fund and for the payment of dearness allowance, and,
>
> (iii) increment component of Fixed Personal Allowance; and,
>
> (iv) dearness allowance thereon on the above calculated upto Index number 1616 points in the All India Average Consumer Price Index for Industrial Workers in the series 1960 = 100.
>
> Explanation:
>
> For the purpose of this clause, basic pay, other components of pay and Fixed Personal Allowance would mean the basic pay, other components of pay and Fixed Personal Allowance drawn by the employee in terms of the scales of pay as applicable and the rates at which the other components of pay were payable prior to 01.11.1997 (in the case of workman) and prior to 01.04.1998 (in the case of officers)."

10. It is not the case of the petitioners that the petitioners were not paid higher salary due to the increase of dearness allowance from 1.4.1998 and persons who retired prior to 1.4.1998 were not given the said benefit. All the pensioners are sanctioned pension based on the pre-revised pay. Thus, there is a reasonable

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classification insofar as the persons retired prior to 1.4.1998 and persons retired on or after 1.4.1998, as they were paid salary with higher dearness allowance. The said increase of dearness allowance was not taken for calculation of pension to those who are retiring after 1.4.1998. Thus there is intelligible differentia and there is no discrimination to the petitioners as alleged by them. In fact there is only a technical difference in calculation of the pay and there is no actual difference, as all are given pension based on the pre-revised pay.

11. In the decision reported in 2006 SCC (L&S) 1948 = (2006) 9 SCC 630 (U.P.Raghavendra Acharya and others v. State of Karnataka and others) in paragraphs 21 and 22, the Supreme Court held as follows,

> "21. It is one thing to say that the State can fix a cut-off date unless and until the same is held to be arbitrary or discriminatory in nature, the same would be given effect for carrying out the purpose for which it was fixed. In this case, the cut-off date for all intent and purport had been fixed as 1-1-1996. It is, thus, not a case where cut-off date was fixed as 1-4-1998 as the State merely intended to confer only the same benefits. It is, thus, also not a case like *Transmission Corpn., A.P. Ltd.* v. *P. Ramachandra Rao ((2006) 9 SCC 623)* where a section of the employees were excluded from being given the benefit of revised pension as they had retired prior to the cut-off date.
>
> 22. The State while implementing the new scheme for payment of grant of pensionary benefits to its employees, may deny the same to a class of retired employees who were governed by a different set of rules. The extension of the benefits can also be denied to a class of employees if the same is permissible in law. The case of the appellants, however, stands absolutely on a different footing. They had been enjoying the benefit of the revised scales of pay. Recommendations have been made by the Central Government as also the University Grant Commission to the State of Karnataka to extend the benefits of the Pay Revision Committee in their favour. The pay in their case had been revised in 1986 whereas the pay of the employees of the State of Karnataka was revised in 1993. The benefits of the recommendations of the Pay Revision Committee w.e.f. 1-1-1996, thus, could not have been denied to the appellants."

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The above decision cited by the learned counsel for the petitioners is not supporting the contentions of the petitioners.

12. The learned counsel appearing for the respondents cited the decision reported in 2002 AIR SCW 630 = (2002) 3 SCC 411 (I.T.C. Ltd., Workers Welfare Association and another v. The Management of ITC Ltd. and others) to support his contention that the settlement arrived during the course of conciliation cannot be ignored unless it is demonstrably unfair and unjust. The settlement arrived at is binding on all Workmen and the individual employee cannot seek to wriggle out of it merely because it does not suit him. In the said Judgment, it is held that in a settlement, a clause alone cannot be challenged. In paragraph 26 (in SCC) of the said Judgment the Supreme Court held as follows,

> "26. Firstly, it is to be borne in mind that there was no challenge at any time to any of the terms of the settlement other than the clause relating to pension insofar as it confines the benefit of lifelong pension only to those who retire on or after 24-8-1986. Secondly, we must give due weight to the fact that the settlement was reached as a result of collective bargaining and with the assistance of the Conciliation Officer. Invariably, there would be an element of give and take in the deal leading to the settlement. Granting the benefit of lifelong pension prospectively or with limited retroactive effect does not make the settlement unjust or unfair. It is certainly beneficial to the workmen in service and those who retired a few months earlier. The mere fact that the management did not go the whole hog to extend the benefit to all the retired employees does not impart an element of unjustness or unreasonableness to the settlement. Financial implications apart, the benefits granted to workmen under various other clauses of settlement have to be kept in view. This particular clause relating to pension cannot be considered in isolation. The learned Senior Counsel for the petitioners argued that there was no justification in making a sub-classification amongst the retired employees by giving the benefit to those who retired only between 24-8-1986 and the date of settlement. In our view, conferment of such additional benefit to workmen who retired after the date of platinum jubilee celebration and before the date of culmination of settlement, far from making it unjust or irrational, tantamounts to extending benefit to

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some more workmen who would not have got it otherwise, if the decision was implemented prospectively. Apparently, such decision was taken to arrive at an amicable settlement and to comply with the demands of the workmen to the extent feasible and practicable. The argument that either all the retired employees should be given the benefit or none at all cannot cut ice if the principles of collective bargaining and justness of the settlement viewed as a whole is kept in view. There is nothing which is palpably unjust or irrational in giving the benefit only to those who retired during and after the platinum jubilee year. Though there was some dispute as to the correctness of the date on which the platinum jubilee falls, no material has been placed before us excepting the date of incorporation of the Company to establish the version of the appellants in this regard. Picking up that date by going a little backwards from the date of settlement cannot be regarded as a whimsical or arbitrary step, more so when it was done with the consent of large majority of workmen. The Tribunal while adjudicating the dispute and the High Court while exercising its jurisdiction under Articles 226/227 should be circumspect and cautious in disturbing the terms of settlement founded on collective bargaining and conciliation. The adjudicator of industrial dispute could not have directed the benefit to be extended to all the retired employees by substituting its own views to those reflected in the settlement, on an application of the usual principles governing industrial adjudication."

13. A Similar issue was again considered by the Supreme Court in the subsequent decision reported in (2006) 9 SCC 623 (Transmission Corporation, A.P.Ltd., and others v. P.Ramachandra Rao and another). In paragraphs 16 to 18 of the said Judgment, the Supreme Court held thus,

"16. Exclusion of workmen retiring before the date fixed is no good ground to characterise settlement as unjust or unfair. In fact in the instant case there is no challenge to the legality of the settlement.

17. As the settlement entered into in the course of conciliation proceedings assumes crucial importance in the present case, it is

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necessary for us to recapitulate the fairly well-settled legal position and principles concerning the binding effect of the settlement and the grounds on which the settlement is vulnerable to attack in an industrial adjudication. Analysing the relative scope of various clauses of Section 18, this Court in *Barauni Refinery Pragatisheel Shramik Parishad* v. *Indian Oil Corpn. Ltd. ((1991) 1 SCC 4)* succinctly summarised the position thus: (SCC p.5)

> "Settlements are divided into two categories, namely, (*i*) those arrived at outside the conciliation proceedings [Section 18(*i*)] and (*ii*) those arrived at in the course of conciliation proceedings [Section 18(3)]. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognised majority union has extended application as it will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on the others. Tha t is why a settlement arrived at in the course of conciliation proceedings is put on a par with an award made by an adjudicatory authority."

18. As observed by this Court in *Tata Engg. case ((1981) 4 SCC 627)* a settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on

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> the basis of principles different from those which comes into play when an industrial dispute is under adjudication. If the settlement had been arrived at by a vast majority of workers concerned with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference made under the Act merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. The decision in *Herbertsons Ltd. case ((1976) 4 SCC 736)* was followed."

14. From the above referred decisions and in view of the fact that dearness allowance having been increased from 1.4.1998, the respondents are justified in adopting pre-revised pay for calculation of pension and the same is accepted by all, including the petitioners by receiving the arrears of pay. The petitioners, having accepted part of the benefits, are estopped from challenging the remaining portion of the settlement, which is now incorporated in the regulations. There is no discrimination in payment of pension as all the retired employees are paid pension only on the basis of the pre-revised pay.

15. There is no merit in the writ petition and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Secretary to the Banking Division,
Ministry of Finance, New Delhi - 110 001.

2. The Competent Authority for Pension Regulations,
(Assistant General Manager),
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